

REMARKS

Claims 1-19, 21-23, 26-29 are pending. By this Amendment, no claims are cancelled, claims 1 and 27 are amended and no new claims are added. The specification has been Amended to correct typographical errors identified by the Office Action. No new matter has been added.

Amendments to the Specification

The Abstract was amended to remove the word “said” as per the Office Action’s request. Further, the specification was amended to remove the hyperlink on page 4, line 19. In addition, the specification was amended to correctly identify the sequences on page 5, lines 29-31, page 16, lines 19-20 and page 17, lines 4-5. Finally, typographical errors referring to the protein as CPGB have been corrected to recite CGBP, the correct denomination of the protein. Support for these amendments can be found, for example, in the original specification, as filed, and in the original sequence listing. Therefore no new matter has been added.

Amendments to the Claims

Claims 1 and 27 have been amended to correct typographical errors referring to the claimed subject matter as CPGB have been corrected to recite CGBP, the correct denomination of the protein. Support for these amendments can be found, for example, in the original specification, as filed. Specifically, in the abstract, and on Page 9, lines 15-20 of the original specification. Therefore no new matter has been added.

Certified Translation

Certified English translations of PCT/EP05/02198 and GERMANY 10 2005 001 889.0, compliant with 37 CFR 41.154(b), are submitted with this response.

Claim Rejections Under 35 U.S.C §102

Claims 1, 4-6, 12-19, 26-29 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,817,290 to Vijg et al. The Applicant respectfully traverses the rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §§2131 (quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987)). The Applicant respectfully submits that a *prima facie* case of anticipation has not been established because Vijg et al. fails to teach or suggest all features of the claims, as amended.

The Vijg et al. reference describes a method for testing for mutagenesis, by utilizing vectors integrated into the DNA of a cell or organism. (Vijg et al., Col. 4, lines 7-9) These organisms are exposed to a treatment or procedure and then the vector is excised from the organism and tested for mutations (Id. Col 4, lines 9-23). The vectors may include a nucleic acid test region which contains a binding domain, the nucleic acid test region can then be captured by a capture moiety having a binding protein. (Id. Col 5, lines 14-27) More specifically, the reference discloses utilizing a binding domain, such as LacZ reporter gene and binding protein such as LacI fusion protein, LacZ/LacI fusion protein or LacZ/ProteinA fusion protein in order to bind the nucleic acid test region. (Id. Col. 5, lines 20-40, Col. 8, lines 15-20)

This bound region is excised from the host cell or organism DNA utilizing a restriction Enzyme such as Hind III. (Id.) The excised nucleic acid test region is then transferred to *E. Coli* test cells to test for mutation. (Id. Col. 5, lines 20-40, Col. 8, lines 15-20)

However, Vijg et al. fails to disclose, teach or suggest contacting at least one prokaryotic DNA, present in solution, with a protein which specifically binds prokaryotic DNA and has 25% to 35% homology with the wild type CGBP protein, as claimed in claim 1 and 27. In fact, Vijg et al. discloses utilizing a vector inserted into a cell or organism having a test region that binds to a capture moiety, which is subjected to treatment, and then recovered from the cell or organism utilizing the capture moiety. There is no disclosure of binding prokaryotic DNA having 25% to 35% homology with wild type CGBP protein. In fact, there is no disclosure of CGBP at all. Consequently, the Applicant respectfully requests that the rejection of claims 1 and 27 and their respective dependent claims be withdrawn as Vijg et al. fails to disclose all the limitations of the claims, as amended.

Claims 1-14, 21-23 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application 2008/0076671A to Bird et al.. The Applicant respectfully traverses the rejection.

It is respectfully submitted that the cited reference is not prior art under § 102(e) with respect to the present application. Under 35 U.S.C. § 363, the U.S. filing date of the present application, a national stage application, is the international filing date for the purpose of determining whether information is prior art. MPEP § 1893.03(b). The present application is a national stage application of PCT/EP2005/002198 with an international filing date Mar. 2, 2005.

Under revised 35 U.S.C. 102(e), an international filing date which is on or after November 29, 2000 is a United States filing date if the international application designated the United States and was published by the World Intellectual Property Organization (WIPO) under the Patent Cooperation Treaty (PCT) Article 21(2) in the English language. MPEP §706.02(a)(II)(B). The Bird et al. reference is a U.S. Application Publication of PCT/GB05/004202, filed Oct. 31, 2005 in the English Language and designating the U.S. Thus, the 102(e) date of the Bird et al. reference is the international filing date of Oct. 31, 2005. As such, the Bird et al. 102(e) date of Oct. 31, 2005 does not antedate the Mar. 2, 2005 filing date of the present application. Thus, the Bird et al. reference cannot be prior art under 35 U.S.C. § 102(e). Therefore, claims 1-14, 21-23 are believed to be allowable and the Applicant respectfully requests withdrawal of the 102(e) rejection.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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